IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3481 of 1995

For Approval and Signature:

HON'BLE MR. JUSTICE ANANT S DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHADVSAVLE MOHAN MADHUKAR

Versus

PERTILIZERNAGAR SCHOOL PRINCIPAL

Appearance:

1. Special Civil Application No. 3481 of 1995

MR AB VYAS for Petitioner No. 1

MR SP HASURKAR for Respondent No. 1

MR DEVANG NANAVATI for Respondent No. 2

Mrs. Manisha L. Shah, AGP Respondent No. 3-4

CORAM : HON'BLE MR. JUSTICE ANANT S DAVE

Date of decision: 03/11/2004

ORAL JUDGEMENT

1. This petition under Articles 226 and 227 of the Constitution of India challenges the legality and validity of the order dated 26th September 1994, passed by the Gujarat Higher Secondary School Tribunal ('Tribunal' for short) in Application No.266 of 1989, confirming the order of dismissal dated 29th September 1989 passed by the respondent No.1-school, on the grounds that the orders are contrary to law and the departmental enquiry was conducted in violation of principles of natural justice. The petitioner has prayed to quash and set aside aforesaid two orders and to direct the respondents to reinstate the petitioner in service with continuity in service with full back wages.

2. The learned advocates for the respondents have vehemently submitted that in spite of fair opportunities have been given from time to time to the petitioner, the petitioner had failed to attend the enquiry proceedings and, on completion of departmental enquiry, the petitioner's services have been terminated in accordance with law. It is further submitted that the deemed approval of the Director of Education qua the said dismissal order is available to the Management. It is further submitted that the Tribunal, on the basis of finding of fact and on appreciation of evidence on record, upheld the order of dismissal. The learned advocates for the respondents have, therefore, urged that this Court may be pleased not to invoke the extraordinary power under Articles 226 and 227 of the Constitution of India so as to disturb the findings of fact arrived at by the Tribunal. The learned advocates for the respondents have further submitted that the punishment inflicted upon the petitioner herein is just, adequate and proportionate to the misconducted proved and, therefore also, the punishment is not required to be disturbed.

3. I have heard the learned advocates for the parties.

4. On the basis the findings of fact recorded by the Tribunal, the Tribunal has come to the conclusion that the report of the Enquiry Officer was based on uncontroverted depositions of the head-master, students and colleagues of the petitioner, who were co-employees of the delinquent. It was observed by the Tribunal that the petitioner's reply to the second show cause notice and his written representation before the Director of Higher Education also did not mention an iota of evidence which would dislodge the findings arrived at by the Enquiry Officer and the Disciplinary Authority. In the facts and circumstances case, the Tribunal thought it fit

not to disturb the findings of the Enquiry Officer.

5. So far as the quantum of penalty aspect is concerned, the Tribunal has come to the conclusion, by summarizing the charges against the petitioner, that a Lab Coordinator like the petitioner does not conduct classes as asked for by the Head Master, and,'if he does not carry out examination work if he does not do the supervision work and indulges into sales of journals to the students, the charges are serious." The Tribunal has further arrived at the conclusion that the charge of remaining absent without leave report is also admitted by the delinquent and the petitioner has not improved in spite of repeated warnings and continued to remain absent even during the days of annual inspection and panel observation and, therefore, the petitioner's behaviour was of unbecoming of a teacher and the Tribunal has refused to interfere with the order of dismissal on the ground that the charge against the petitioner were already enough to lead to the Management to inflict the penalty of dismissal.

6. On going through the entire record of the case, I am in agreement with the findings recorded by the Tribunal and the order of the Tribunal dated 26th September 1994 is just, and proper, and does not warrant any interference at the hands of this Court in exercise of extraordinary jurisdiction under Articles 226 and 227 of the Constitution of India, particularly the said findings have been arrived at by the Tribunal after examining the evidence on record. Having carefully considered the report of the Enquiry Officer and the submissions made by the learned advocates for the parties, I do not find it proper to quash and set aside the impugned orders as prayed for by the petitioner. Therefore, there is no substance in the present petition. The petition, therefore, fails and is rejected. Rule is discharged with no order as to costs.

(Anant S. Dave, J.)
(swamy)